



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

September 16, 2003

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rodney McMullen
Hitching Post Mobile Home Park, Inc.
6501 S. Douglas Highway #1
Gillette, Wyoming 82718

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2003-0052**
PWS ID #WY5600119C

Dear Mr. McMullen:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) filed against the Hitching Post Mobile Home Park, Inc. ("Hitching Post"), under Section 1414 of the Safe Drinking Water Act (SDWA) 42 U.S.C Section 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the Complaint that Hitching Post failed to comply with an Administrative Order, Docket No. SDWA-08-2001-20, issued on June 7, 2001, under Section 1414(g) of the SDWA, 42 U.S.C. Section 300g-3(g). These violations are specifically set out in the Complaint.

By law, you have the right to request a hearing regarding the matters set forth in the Complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer". If you do not respond to this Complaint within 30 days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your Answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You may appear at the conference yourself and/or be represented by your counsel.



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Hitching Post Mobile Home Park
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EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a Final Order by the Regional Judicial Officer, EPA Region 8. The issuance of a Consent Agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated therein.

A request for an informal conference does not extend the 30 day period during which you must submit a written Answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneous with the adjudicatory hearing.

Also enclosed is a Small Business Regulatory Enforcement and Fairness Act (SBREFA) Section 22 information sheet. The SBREFA sheet notifies small businesses of their right to comment on regulatory enforcement activities, and provides information on compliance assistance. Dissemination of this information sheet does not constitute an admission or determination by EPA that the business, organization or governmental jurisdiction is a small entity as defined by SBREFA.

If you have questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainch, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6467 or Michelle Marcu, Enforcement Attorney, who can be reached at 800/227-8917 extension 6921.

We urge your prompt attention to this matter.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Larry Robinson, WYDEQ
Dr. Karl Musgrave, WYDOH

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)	
)	
Hitching Post Mobile Home Park, Inc.))	
6501 S. Douglas Highway #1)	
Gillette, Wyoming 82718)	
)	Docket No. SDWA-08-2003-0052
Respondent)	
)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Proceedings under section 1414(g))	
of the Safe Drinking Water Act,)	
42 U.S.C. § 300g-3(g))	

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing ("Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 1414(g)(3) of the Safe Drinking Water Act, as amended ("SDWA"), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty, not exceeding \$25,000, against any person who violates, or fails or refuses to comply with, an Order under section 1414(g)(1) of the SDWA.

Complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized

to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. ("Consolidated Rules of Practice") (Complainant's Attachment 1).

GENERAL ALLEGATIONS

1. The Hitching Post Mobile Home Park, Inc. ("Respondent") is a corporation under the laws of the state of Wyoming as of January 8, 1996 and therefore a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the Hitching Post Mobile Home Park water system, located in Campbell County, Wyoming for the provision to the public of piped water for human consumption.
3. The Hitching Post Mobile Home Park water system has at least 15 service connections used by year-round residents and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "community water system" within the meaning of section 1401(15) of the Act, 42 U.S.C. § 300f(15) and 40 C.F.R. § 141.2.
4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the

meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g et seq., and its implementing regulations, 40 C.F.R. part 141.

5. According to a June 29, 2000, sanitary survey conducted by an agent of EPA, Respondent operates a system that is supplied solely by a groundwater source consisting of one well. The system serves an average of 50 persons daily through 33 service connection and is open all year.
6. On June 7, 2001, EPA issued an Administrative Order (Docket No. SDWA-08-2001-20) to the Respondent pursuant to section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1), citing violations of the NPDWRs. A copy of the Administrative Order is attached to this Complaint and incorporated herein (Complainant's Attachment 2).
7. The Administrative Order required the Respondent, among other things, to achieve compliance with the NPDWRs, 40 C.F.R. part 141, in accordance with the schedule set forth in the Administrative Order.
8. On March 22, 2002, EPA sent Respondent a "Violation of Administrative Order" letter citing Respondent's

failure to comply with the Administrative Order, the SDWA and the NPDWRs. (Complainant's Attachment 3).

SPECIFIC ALLEGATIONS

Count I

Failure to Monitor for Volatile Organic Contaminants

9. 40 C.F.R. § 141.24(f) requires that community water systems monitor their water annually to determine compliance with the maximum contaminant level ("MCL") for volatile organic contaminants as stated in 40 C.F.R. § 141.61.
10. Page 5, Paragraph 1. of the Order section of the Administrative Order, required Respondent to comply with the organic chemical monitoring requirements as stated in 40 C.F.R. § 141.24(f) (5) to determine compliance with the MCL for volatile organic contaminants appearing at 40 C.F.R. § 141.61(a), and to report analytical results to EPA within the first 10 days following the month which results are received, as required by 40 C.F.R. § 141.31(a).
11. Respondent failed to monitor its water for volatile organic contaminants in 2001, in violation of the Administrative Order and 40 C.F.R. § 141.24(f).

Count II

Failure to Monitor for Nitrate

12. 40 C.F.R. § 141.23(d) requires public water systems to monitor their water annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.
13. Page 9, Paragraph 5. of the Order of the Administrative Order required Respondent to comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b) and also required Respondent to report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
14. Respondent failed to monitor its water for nitrate in 2001 and 2002, in violation of the Administrative Order and 40 C.F.R. § 141.23(d).

Count III
Failure to Notify the Public
of NPDWRs Violations

15. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any NPDWR violations, including violations of monitoring requirements, and testing procedures found in 40 C.F.R. part 141.

16. Pages 9 and 10, Paragraph 6. of the Order section of the Administrative Order required Respondent, within one year of the effective date of the Administrative Order, to provide a public notice for the violations specified in the Administrative Order OR use an annual report detailing all violations and situations that occurred during the previous twelve months, to return to compliance with 40 C.F.R. §§ 141.201, 141.204 and 141.205. The Administrative Order and 40 C.F.R. § 141.204 specify that Respondent shall give the notice by any one of the following methods: (1) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system; (2) by mail or direct delivery to each customer and service connection; AND (3) any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice described in (1) and (2), including publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations. The Administrative Order also required Respondent to comply with the publication notification requirements at 40 C.F.R. § 141.201

_____ et seq. following any future NPDWR violation and submit a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

17. Respondent failed to provide notice to the public of the violations identified in the Administrative Order and violations identified in the Counts set forth above and failed to submit a copy of the public notice to EPA, in violation of the Administrative Order and 40 C.F.R. §§ 141.201 and 141.31(d).

Count IV
Failure to Report Noncompliance
with NPDWRs to EPA

18. 40 C.F.R. § 141.31(b) requires that except where a different period is specified by 40 C.F.R. part 141 public water systems shall report any failure to comply with the NPDWRs (40 C.F.R. part 141) to EPA within 48 hours.
19. Page 9, Paragraph 5. of the Order section of the Administrative Order required Respondent to comply with 40 C.F.R. § 141.31(b) by reporting to EPA any failure to comply with any National Primary Drinking Water Regulation (40 CFR Part 141) within 48 hours.

20. Respondent failed to report to EPA instances of noncompliance detailed in the Counts set forth above, in violation of the Administrative Order and 40 C.F.R. § 141.31(b).

PROPOSED ADMINISTRATIVE CIVIL PENALTY

Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to assess an administrative civil penalty of up to \$25,000 for violation of an Administrative Compliance Order issued under Section 1414(g)(1) of the SDWA. The proposed penalty has been determined in accordance with Section 1414 of the SDWA, 42 U.S.C. § 300g-3. For purposes of determining the amount of any penalty to be assessed to calculate a rational and consistent penalty, EPA has taken into account the seriousness of the violation, the population at risk, and other appropriate factors, including Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to Complainant at this time. Based on the above factors, EPA proposes to assess an administrative civil penalty of \$4,000 against Respondent for violation of the Administrative Order and the NPDWRs.

OPPORTUNITY TO REQUEST A HEARING

As provided in Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), a Respondent has the right to request a public hearing on any material fact alleged in this Complaint or on the

appropriateness of the proposed penalty or to assert that he is entitled to judgment as a matter of law.

If you wish to request a hearing, you must file a written Answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after this Complaint is served. If this Complaint is served by mail, you have an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.07(c).

If you request a hearing in your Answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. HOWEVER, you have the right under the Act to elect a hearing on the record in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. ("APA"). To exercise this right, you must include in your Answer a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

Your Answer and one copy must be in writing and must be sent to the EPA Regional Hearing Clerk at the address below:

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Tina Artemis
Region 8 Hearing Clerk (8RC)
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, Colorado 80202-2466

FAILURE TO FILE AN ANSWER

To avoid entry of a Default Order against you pursuant to 40 C.F.R. § 22.17 for the full amount of the penalty proposed in this Complaint, Respondent must file a written Answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this Complaint. Respondent's Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Respondent's Answer should state (1) the circumstances or arguments which are alleged to constitute grounds of defense, (2) a concise statement of the facts which Respondent intends to place at issue in the hearing, and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained in this Complaint shall constitute an admission of the allegation. Upon request, the Administrator will hold a hearing for the assessment of an administrative civil penalty in accordance with the provisions of 40 C.F.R. part 22.

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation, in a settlement conference does not extend the period for filing an Answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer. A request for a settlement conference, or any questions that you may have regarding this Complaint, should be directed to the attorney listed below.

Dated this 11TH day of September, 2003.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Complainant.

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Signed

Michelle D.Jalazo, Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466
Telephone Number: (303) 312-6921
Facsimile Number: (303) 312-6953

IN THE MATTER OF :

Hitching Post Mobile Home
Park, Inc.

DOCKET NUMBER:

SDWA-08-2003-0052

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Attachments 1 through 4 were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was delivered as follows:

Via certified mail to:

Rodney McMullen
Hitching Post Mobile Home Park, Inc.
6501 S. Douglas Highway #1
Gillette, Wyoming 82718

Date: 9/16/03

By: SIGNED
Tiffany Mifflin

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 16,
2003.**